

APPENDIX B
Factual and Legal Conclusions

1. Brooks provides local exchange telephone service only in the Brooks Portland area exchange (CO codes 228, 239 and 464), consisting of areas within the municipal boundaries of Portland, South Portland and Westbrook.

2. Brooks does not provide local exchange service in any other location in the State of Maine, including the locations at which Brooks and the NANPA have assigned its 52 other CO codes (the non-Portland codes). Brooks does not have the present ability to furnish potential local exchange customers in those locations with loops, switching and other facilities that are necessary to provide local exchange service. Brooks also does not have the legal authority to provide local exchange service in those locations because its terms and conditions on file with the Commission limit its local exchange service offering to its Portland area exchange.

3. The purpose of a CO code (NXX) is to allow a carrier to provide local service, i.e., the ability of local customers to make and receive local calls. While those codes are also used for making and receiving interexchange calls (using the LEC or a different carrier), it is not necessary for a carrier providing only interexchange (long distance) service to obtain CO codes. A customer placing a long distance call uses a local carrier to connect to the long distance carrier, either by intraLATA presubscription (1+ dialing) or by the use of a CIC code (101XXXX).¹

4. No calls placed to the 52 non-Portland Brooks codes terminate in the locations to which those CO codes are assigned. All of the calls placed to the 52 non-Portland codes terminate at premises of Brooks's customers that are within the Brooks Portland area exchange.

5. Brooks is not using the 52 non-Portland area codes to provide local service in the locations to which the codes have been assigned. Instead, Brooks has requested and is using the 52 non-Portland CO codes to gather traffic throughout areas of the state that are outside Brooks's Portland exchange (and outside

¹Similarly, for interstate (or intrastate interLATA) purposes, an IXC needs to obtain a presubscription agreement with the local carrier(s) or a CIC code, but does not need CO codes.

the BSCA of Bell Atlantic's Portland exchange), to bring that traffic to its switch located in its Portland area exchange, and to route that traffic to customers located in the Portland area exchange. Brooks is using the codes so that end-users may obtain toll-free service between each of the locations at which the 52 codes are assigned and the Brooks Portland area exchange, and so that Brooks's customers (e.g., ISPs and voice mail providers) may gather traffic on a toll-free basis. In areas served by those ILECs (Bell Atlantic and 7 ITCs) that have permitted calls to the Brooks non-Portland area CO codes to be completed, Brooks is providing the equivalent of 800 or foreign exchange service to end users and its customers. Brooks itself characterizes the service as equivalent to foreign exchange service. It claims, however, that foreign exchange service is local because an end-user in a non-Portland area may dial a "local" Brooks CO code (one assigned to the same exchange or within the same BSCA in which the end-user placing the call is located), and the caller is not charged a toll charge for the call. The service Brooks is providing is equivalent to foreign exchange service (at least for inward calling, i.e., calls originating outside the Brooks Portland area exchange and terminating in Portland) in all material respects. Brooks is incorrect, however, that the service is a local, rather than an interexchange, service. By definition, foreign exchange service allows an end-user located in the "foreign" exchange (e.g., Augusta) to dial a number that is located within the caller's BSCA and be connected to the subscriber of the foreign exchange service, who is located in a different exchange, normally one that is outside the caller's BSCA, e.g., an FX subscriber in Portland. In the absence of the foreign exchange service, the end user placing the call would be billed toll charges if the call terminated outside the caller's BSCA. Chapter 280, § 2(G) defines traffic between exchanges as "interexchange traffic", unless it is between points having "local calling" with each other.² Under Chapter 280, §§ 2(A) and 8, interexchange service provided by a carrier is subject to interexchange access charges. Accordingly, the Brooks foreign exchange-like service described in this paragraph is interexchange service, and the traffic that originates in areas to which Brooks's non-Portland area CO codes are assigned and that terminates in Brooks's Portland area exchange is interexchange traffic. End-users who are located in the local calling areas to which Brooks's non-Portland area codes are assigned place calls to those non-

²Section 2(G) includes "extended area service" as part of local calling. We interpret that provision to include calling within a BSCA as "local."

Portland codes, and the ILECs transport that traffic over their interexchange facilities at their cost to Brooks's Portland area exchange. Brooks, Brooks's customers and end users who place calls using the Brooks non-Portland CO codes are not paying for the costs incurred by the ILECs for providing that interexchange service.

6. The legal conclusion that the traffic described in paragraph 4 and 5 is interexchange, not local, is based on the definitions of "interexchange traffic" and "interexchange service" contained in Chapter 280 § 2(G) of the Commission's rules. Those definitions are fully consistent with the definitions of "interexchange" and "local" contained in the interconnection agreement between Brooks and Bell Atlantic, approved by the Commission in Docket No. 97-052. Accordingly, the interconnection agreement also defines the traffic described in paragraphs 4 and 5 of NOI, Part IV as "interexchange." The agreement applies interconnection charges only to local traffic and applies each carrier's access tariff to interexchange traffic. There is nothing else in the agreement that contradicts the conclusion that the described traffic is interexchange or that it should not be subject to access charges.

7. Based on the legal conclusions in paragraph 5 that traffic described in paragraph 4 and 5 is interexchange traffic, ILECs and other CLECs would be justified in rating it accordingly, i.e., applying toll charges if the Brooks Portland area exchange is outside the local calling area of any exchange of the ILEC or other CLEC.

8. The use of CO codes, whether by Brooks or by other CLECs or ILECs, for the purpose of allowing customers to avoid toll charges, rather than for the purpose of providing local exchange service, presents a serious risk that CO codes, which are a limited resource within any given area code, will be exhausted and that will be necessary to implement a second area code for the State of Maine. In Docket No. 98-634, the Commission has commenced an investigation into the matter of code exhaust and the need to conserve codes. The Commission finds the exhaustion of CO codes in the 207 area code is undesirable because it will cause substantial disruption to many customers in Maine by requiring them to change either their area code, their seven-digit telephone number or both, and may require 10-digit dialing for some or all intrastate calls.

9. The use of CO codes by Brooks to avoid toll charges creates a serious risk of erosion of the distinction between local calling (home exchange plus exchanges that are within a BSCA) and toll calling that is embodied in the ILECs' terms and conditions and in regulatory policy (e.g., Chapter 204, the Basic Service Calling Areas (BSCA)). Any such breakdown or erosion should occur only pursuant to an intentional policy choice rather than because of the misuse of CO codes. A breakdown of the toll-local distinction, with "free" calling to areas that formerly required toll charges, may have several significant consequences. First, carriers' ability to maintain calling areas that require toll charges might be substantially diminished, with the result that more (or even all) costs would have to be loaded onto rates for basic service, which therefore may need to increase substantially. In addition to rate effects, a breakdown of the toll/local distinction might also have a substantial impact on traffic patterns and levels, on service quality (because of temporary shortage of facilities) and the need to invest in additional transport and switching facilities. The distinction between local and toll in Bell Atlantic's and the ITCs' tariffs reflects existing traffic volumes and investment patterns.

The existence of foreign exchange (FX) service does not by itself cause the risks and concerns described above if the pricing for the use of the facilities that are utilized in that service, and to subscribers of the service, properly reflects the interexchange nature of the service. Thus, to avoid the risks described above, carriers providing the transport facilities that carry the traffic of the carrier offering the FX service should charge prices for the use of those facilities that reflect the interexchange nature of the ultimate service that is offered; if so priced, it is likely the price to subscribers to the FX services would also reflect the interexchange nature of the service. At present, Brooks is not paying BA anything for the use of BA's trunking facilities that carry traffic originating in the areas of Brooks's non-Portland codes to Brooks's switch in Portland. Indeed, BA pays Brooks local interconnection charges (as part of reciprocal compensation) for the termination of that traffic on Brooks's local facilities.

10. The use of the 52 non-Portland area CO codes by Brooks for the gathering of toll traffic and avoidance of toll charges, rather than for providing local exchange service, is wasteful of scarce resources, creates a substantial risk that the harms described in paragraphs 7 and 8 above will occur, and

constitutes an unreasonable act or practice within the meaning of 35-A M.R.S.A. § 1306.